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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/725,737  
Filing Date: November 29, 2000  
Appellant(s): GIACOMINI ET AL.

\_\_\_\_\_  
Jason Paul DeMont # 35,793  
For Appellant

**EXAMINER'S ANSWER**

**MAILED**  
**OCT 17 2007**  
**GROUP 2600**

This is in response to the appeal brief filed 6/26/07 appealing from the Office action mailed 4/27/07.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

7,039,683 B1	Tran et al	5-2006
6,408,360 B1	Chamberlain et al	6-2002
6,463,509 B1	Teoman et al	10-2002

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 112***

1. Claims 2,9,16,25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

i.e.:  $i$  is an integer and greater than one (= two or more, or variable, claims 1,8,15,24) versus  $i$  is invariant (claims 2,9,16,25). The specification teaches these as alternative embodiments since claim 1 clearly recited  $i$  is variable by reciting the  $i$  is occasional greater than 1. It can't be invariant.

***Allowable Subject Matter***

2. Claims 3-7,10,13,14,17-21,26,29 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Claim Rejections - 35 USC § 102***

Claims 1,8,11,12,15,22-24,27-28 and 31-32 are rejected under 35 U.S.C. § 102(e) as being anticipated by Tran et al [Tran, 7,039,683 B1] or admitted prior art.

3. As per claim 8, Tran discloses a data processing system comprising:  
a cache for storing a resource [Tran, cache value, col 4 lines 25-42] ; and a processor for populating said cache with said resource only when at least  $i$  requests for said resource have been received [Tran, network with access requestor and resources, Fig 4; before, after or while an access request is made, col 1 lines 66]; wherein  $i$  is an integer and is at least occasionally greater than one [Tran, the software may calculate a cache value based on number of requests, col 4 lines 25-42].

4. Claims 1,15,24 contain the similar limitations set forth of apparatus claim 8. Therefore, claims 1,15,24 are rejected for the similar rationale set forth in claim 8.

5. As per claims 11,27 Tran discloses said cache is populated with said resource only when at least  $i$  request for said resource have been received within an elapsed time interval,  $A_t$ , as inherent feature of the number of requests via network.

6. As per claims 12 and 28 Tran discloses the duration of said elapsed time interval,  $A_t$ , is based on the value of  $i$  as inherent feature of the number of requests via network.

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7. As per claims 22,23,31,32 Tran discloses said computer network is a hierarchical computer network and said first node has m filial nodes [Tran, a network with access requestor and resources, Fig 4; before, after or while an access request is made, col 1 lines 66]; wherein said cache is populated with said resource only when at least one request for said resource has been received from at least n of said m filial nodes; and wherein m is an integer greater than one, n is an integer greater than one, and  $m \geq n$  [Tran, the software may calculate a cache value based on the number (more than one) of requests, col 4 lines 25-42].

Claims 1,8,11,12,15,22-24,27-28 and 31-32 are rejected under 35 U.S.C. § 102(e) as being anticipated by Chamberlain et al [6,408,360 B1]

8. As per claim 15 Chamberlain discloses, in Fig 6, A method comprising: receiving at a first node in a computer network at least one request for a resource; retrieving said resource from a second node in said computer network [Chamberlain, the request and subsequent request, col 2 lines 34-60]; and populating a cache in said first node with said resource only when at least i requests for said resource have been received at said first node [Chamberlain, last modified, latest modification, col 2 lines 34-60]; wherein i is an integer and is at least occasionally greater than one [Chamberlain, other request could be tested, col 14 lines 19-26].

9. As per claim 24 Chamberlain discloses A first node in a computer network, said first node comprising:

a cache [Chamberlain, Fig 4, cache 304];

at least one receiver for receiving at least one request for a resource [Chamberlain, the request and subsequent request, col 2 lines 34-60]; and

a processor for retrieving said resource from a second node in said computer network [Chamberlain, Fig 4, HTTPserver 206], and for populating said cache in said first node with said resource only when at least  $i$  requests for said resource have been received at said first node [Chamberlain, last modified, latest modification, col 2 lines 34-60];

wherein  $i$  is an integer and is at least occasionally greater than one [Chamberlain, other request could be tested, col 14 lines 19-26].

10. As per claim 8, Chamberlain discloses a data processing system comprising:

a cache for storing a resource [Chamberlain, Fig 4, cache 304]; and a processor for populating said cache with said resource only when at least  $i$  requests for said resource have been received [Chamberlain, Fig 4, HTTPserver 206]; wherein  $i$  is an integer and is at least occasionally greater than one [Chamberlain, other request could be tested, col 14 lines 19-26].

11. Claim 1, contains the similar limitations set forth of apparatus claim 8. Therefore, claim 1 is rejected for the similar rationale set forth in claim 8.

12. As per claims 11,27 Chamberlain discloses said cache is populated with said resource only when at least  $i$  request for said resource have been received within an elapsed time interval,  $A_t$ , as inherent feature of the number of requests via network.

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13. As per claims 12 and 28 Chamberlain discloses the duration of said elapsed time interval,  $At$ , is based on the value of  $i$  as inherent feature of the number of requests via network.

14. As per claims 22,23,31,32 Chamberlain discloses said computer network is a hierarchical computer network and said first node has  $m$  filial nodes; wherein said cache is populated with said resource only when at least one request for said resource has been received from at least  $n$  of said  $m$  filial nodes; and wherein  $m$  is an integer greater than one,  $n$  is an integer greater than one, and  $m \geq n$  [Chamberlain, LAN, WAN, Internet, col 6 lines 5-10].

Claims 1,8,11,12,15,22-24,27-28 and 31-32 are rejected under 35 U.S.C. § 102(e) as being anticipated by Teoman et al [6,463,509 B1].

15. As per claim 15, Teoman discloses A method comprising:

receiving at a first node in a computer network at least one request for a resource [Teoman, compares the request against a directory of the content of user cache, col 2 line 63];

retrieving said resource from a second node in said computer network [Teoman, data is retrieved from mass storage, col 9 line 23]; and

populating a cache in said first node with said resource only when at least  $i$  requests for said resource have been received at said first node [Teoman, preload and responsive caching, col 9 lines 15-38; preloading all file have been accessed, col 15

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lines 24-50]; wherein  $i$  is an integer and is at least occasionally greater than one

[Teoman, a threshold number of I/O requests, col 13 lines 6-12].

16. As per claim 24 Teoman discloses A first node in a computer network, said first node comprising:

a cache [Teoman, cache 25, Fig 1];

at least one receiver for receiving at least one request for a resource [Teoman, server 29, Fig 1]; and

a processor for retrieving said resource from a second node in said computer network [Teoman, processor, col 4 lines 1-8], and for populating said cache in said first node with said resource only when at least  $i$  requests for said resource have been received at said first node [Teoman, preload and responsive caching, col 9 lines 15-38; preloading all file have been accessed, col 15 lines 24-50];

wherein  $i$  is an integer and is at least occasionally greater than one [Teoman, a threshold number of I/O requests, col 13 lines 6-12].

17. As per claim 8, Teoman discloses a data processing system comprising:

a cache for storing a resource [Teoman, cache 25, Fig 1]; and a processor for populating said cache with said resource only when at least  $i$  requests for said resource have been received [Teoman, preload and responsive caching, col 9 lines 15-38; preloading all file have been accessed, col 15 lines 24-50]; wherein  $i$  is an integer and is at least occasionally greater than one [Teoman, a threshold number of I/O requests, col 13 lines 6-12].



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18. Claim 1, contains the similar limitations set forth of apparatus claim 8. Therefore, claim 1 is rejected for the similar rationale set forth in claim 8.

19. As per claims 11,27 Teoman discloses said cache is populated with said resource only when at least  $i$  request for said resource have been received within an elapsed time interval,  $At$ , as inherent feature of the number of requests via network.

20. As per claims 12 and 28 Teoman discloses the duration of said elapsed time interval,  $At$ , is based on the value of  $i$  as inherent feature of the number of requests via network.

21. As per claims 22,23,31,32 Chamberlain discloses said computer network is a hierarchical computer network and said first node has  $m$  filial nodes; wherein said cache is populated with said resource only when at least one request for said resource has been received from at least  $n$  of said  $m$  filial nodes; and wherein  $m$  is an integer greater than one,  $n$  is an integer greater than one, and  $m \geq n$  [Teoman, LAN,WAN, Internet, col 4 line 45-50].

#### **(10) Response to Argument**

##### **Rejection of claims 2,9,16, and 25 under 112 Rejection (First Paragraph):**

Appellant argues the Examiner confused and incorrectly interpreting the claim language “wherein  $i$  is an integer and is at least occasionally greater than one” to mean “that  $i$  varies and there must be an occasion when  $i$  is not greater than one”.

Examiner points out the Appellant argues that claim 1 is being incorrectly interpreted to mean "that  $i$  varies and there must be an occasion when  $i$  is not greater than one". The claim clearly indicates that  $i$  is an integer that varies between  $-\infty$  and 1 most of the time wherein  $i$  at sometime must be greater than 1 and hence  $i$  must be a variable which varies. Appellant states "The language "is at least occasionally greater than once" means "there is at least one occasion when  $i$  is greater than one and there **might be, but there is not necessarily, one or more occasions when  $i$  is not greater than one**". Since the variable  $i$  varies, claim 2 which recites that  $i$  is not enabling disclosed since  $i$  can not be both variant and invariant.

**Rejection claim 1,8,11,12,15,22-24,27-28, and 31-32 under 102 Rejections:**

(Tran reference)

A. Appellant argues that Tran et al is not prior art since it is alleged that the 102 (e) filing data of Tran et al is 29 December 2000. However this ignores Tran et al's priority claim under 35 U.S.C. § 119(e) which is 25 September 2000 which "*is its earliest effective U.S. filing date, taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. 119 (e) or 120 if the prior application(s) properly supports the subject matter used to make the rejection in compliance with 35 U.S.C. 112, first paragraph*" (MPEP 706.02 (f)). Hence Tran et al qualifies as prior art. Therefore the rejection under 35 U.S.C. § 102(e) should be sustained.

Appellant argues that the claims are directed to "delayed post filing" of a cache. Delayed post filing occurs where  $i$  is 2 or greater. Based upon appellant's argument that "there is at least once occasion when  $i$  is greater than one and there **might be, but**

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**there is not necessarily, one or more occasions when  $i$  is not greater than one**", it is clear that there may never be an occasion where  $i$  is 2 or greater. Hence, pre-filing and post filing ( $i = 0$  and 1, respectively) meet the claimed limitation which is shown in the prior art relied upon.

**B. Claims 1 and 8:**

1. Appellant argues Tran does not teach or suggest "populating a cache with a resource only when at least  $i$  request for said resource have been received".

Examiner points out the Prior art taught "requests for access may be anticipated before, after or while an access request is made" [Tran, col 1 lines 66]. It's clear that the cache populating with a resource when the request for said resource have been received.

2. Appellant argues the  $i$  request is greater than one.

Examiner point outs the Claims 1,8 recite an integer value which may be zero, one and occasionally greater than 1. Hence, if  $i = 0$  the admitted prior art and recited art disclosed preloading the cache and therefore anticipate the rejected claims. When  $i = 1$ , the admitted prior art disclosed the resource is loaded as taught by the application in Fig 3, step 305-309.

**C. Claims 15 and 24:**

1.Appellant argues Tran does not teach or suggest "populating a cache with a resource only when at least  $i$  request for said resource have been received".

Examiner points out the Prior art taught "requests for access may be anticipated before, after or while an access request is made" [Tran, col 1 lines 66]. It's clear that the

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cache populating with a resource when the request for said resource have been received.

2. Appellant argues the  $i$  request is greater than one. Examiner point outs Claims 15,24 recite an integer value which may be zero, one and occasionally greater than 1. Hence, if  $i=0$  the prior art preloading discloses the admitted and art cited anticipated these. When  $i=1$ , the admitted prior art disclosed the resource is loaded as taught by the application in Fig 3, step 305-309.

**102 Rections:** (Chamberlain reference)

**Claims 1,8,15 and 24:**

1. Appellant argues Chamberlain does not teach or suggest "populating a cache with a resource only when at least  $i$  request for said resource have been received".

Examiner points out the Prior art taught "a cache [Chamberlain, Fig 4, cache 304]; at least one receiver for receiving at least one request for a resource [Chamberlain, the request and subsequent request, col 2 lines 34-60]; and a processor for retrieving said resource from a second node in said computer network [Chamberlain, Fig 4, HTTPserver 206], and for populating said cache in said first node with said resource only when at least  $i$  requests for said resource have been received at said first node [Chamberlain, last modified, latest modification, col 2 lines 34-60]; wherein  $i$  is an integer and is at least occasionally greater than one [Chamberlain, other request could be tested, col 14 lines 19-26].

2. Appellant argues the  $i$  request is greater than one.

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Examiner point outs the prior art taught "a web site which receives requests from web pages, based upon those requests, serves web page responses that were previously cached". It's clearly the requests is more than one.

**102 Rections:** (Teoman reference)

A. Claims 1,8,15 and 24:

Appellant argues Teoman does not teach or suggest "populating a cache with a resource only when at least  $i$  request for said resource have been received; wherein  $i$  is an integer and is at least occasionally greater than one".

Examiner points out the Prior art taught the user cache with a threshold number of I/O requests [Teoman, a threshold number of I/O requests, col 13 lines 1-22]. It's clearly the number of requests is greater than one.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

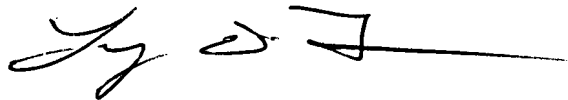
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